

Retailers subject to Special County Retailers' Occupation Tax For Public Safety are authorized to pass on the cost of that tax to their customers. See 86 Ill. Adm. Code 670.101. (This is a GIL).

September 6, 2002

Dear Xxxxx:

This letter is in response to your letter dated June 21, 2002 and our clarifying telephone conversation of August 19, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Thank you for the time that you spent with me on the phone today explaining the issue that we are having with BUSINESS and their sales tax. I would really appreciate it if you could send me something in writing regarding the issues that you have come across with them and explain the Johnson Vs Marshall Field case. If you could also include the two letters, the ST92-0501 and 87-0773, I would really appreciate it. I tried to look the letters up on the Department of Revenue web site and I could not find these two documents.

Any assistance you could give us to be able to go to our customer and get them to pay the 6.75 sales tax would be appreciated. We are really trying to handle our business in a professional and legal manner, but feel we are faced with a few roadblocks.

Thank you again for your assistance.

We understand that your company makes retail sales in CITY, Illinois. We further understand that a customer of yours will not pay the local sales tax and their reason is that they are only obligated to pay the State rate of 6.25%.

Retailers who make sales in CITY, Illinois incur Retailers' Occupation Tax (ROT) at a rate of 6.75% (State – 6.25%, COUNTY Special County Public Safety - .5%). Retailers making sales in CITY incur these liabilities despite the fact that some items may be delivered and used outside of CITY. In addition, retailers incur the COUNTY Special County Public Safety ROT liabilities apart from reimbursement by their customers.

The legal incidence of the Special County Retailers' Occupation Tax For Public Safety is on the retailer. However, the General Assembly has authorized persons subject to any tax imposed pursuant to the authority granted in the Special County Retailers' Occupation Tax For Public Safety Law to reimburse themselves for their sellers' Special County Retailers' Occupation Tax For Public Safety liability by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax which sellers are required to collect under the Use Tax Act [35 ILCS 105], pursuant to such bracket schedules as the Department has prescribed. See 86 Ill. Adm. Code 670.101(b), enclosed.

The statutory authority for the retailer to collect reimbursement also makes it the legal duty of the purchaser to pay such reimbursing amounts to retailers if the retailers elect to use their statutory authority to collect such reimbursing amounts as a separate item from selling prices of tangible personal property. The establishment of this legal right in the retailer (seller) necessarily creates a corresponding legal duty on the part of the purchaser. While this precise issue has not been litigated to our knowledge, we believe the case of Johnson v. Marshall Field & Co., 57 Ill. 2d 272 (1974) can be used as authority by the retailer for the proposition that once the retailer elects to pass on the incidence of a local tax to the customer, the customer is under a legal obligation to pay.

As we discussed, if a customer refuses to pay invoiced amounts for Special County Retailers' Occupation Tax For Public Safety reimbursements, the retailer's only remedy would be to bring a private lawsuit against the customer for these amounts. The customer's refusal to pay these amounts does not relieve the retailer of the obligation to remit the proper amount of tax to the Illinois Department of Revenue.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.